IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2005

CORAM:

THE HONOURABLE MR.JUSTICE K.P.SIVASUBRAMANIAM

W.P.No.10277 of 1994
and
S.A.No.611 of 1998

W.P.No.10277 of 1994:

N.Padmanathan .. Petitioner

versus

1. The District Revenue Officer
   P.M.District.

2. The Tahsildar
   Tirupattur Taluk
   P.M. District.

3. Rama Thittani .. Respondents

S.A.No.611 of 1998:

Padmanabhan .. Appellant/Plaintiff

versus

Thittani .. Respondent/Defendant

PRAYER: W.P.No.10277 of 1994 is filed under Article 226 of the Constitution of India for the issue of a writ of Certiorari calling for the records of the first respondent in his proceedings Na.Ka.C.2.62490/92 dated 16.5.1994 and to quash the same.

S.A.No.611 of 1998 is filed under Section 100 of C.P.C., against the judgment and decree dated 22.8.1997 made in A.S.No.12 of 1992 on the file of the Subordinate Judge, Sivagangai, reversing the judgment and decree dated 12.12.1991 made in O.S.No.273 of 1985 on the file of the District Munsif, Sivagangai.

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For petitioner in W.P.NO. 10277 of 1994/Appellant in S.A.No.611 of 1998 : Mr.V.P.Venket

For respondents-1 & 2 in W.P.No.10277 of 1994 : Mr.R.Lakshminarayanan
Government Advocate

For 3rd respondent in W.P. No.10277 of 1994/Sole respondent in S.A.No. 611 of 1998 : Mr.K.Doraisami
Senior Advocate for
M/s.Muthumani Doraisami

ORDER

Punja lands of an extent of 1.21.05 hectares in Survey No.593/2, Veliyathur Village was classified as poramboke land. It was assigned in favour of one Rangarajan in proceedings dated 23.3.1967. According to the writ petitioner, the assignee had reclaimed the land and was in possession and enjoyment. He sold the land in favour of the petitioner by sale deed dated 29.12.1984. The writ petitioner claims to be in possession of the land since then and that patta was also transferred in his name on 25.1.1985. However, on objection by the third respondent, the Sub-Collector, Devakottai, cancelled the assignment in favour of the petitioner by order dated 3.7.1985. An appeal was filed by both the vendor and the petitioner before the first respondent. The first respondent, by order dated 7.4.1986, set aside the order of the Sub Collector on the ground that the order of cancellation had not been made within a period of three years from the date of assignment. However, the first respondent had initiated suo motu proceedings. It is also alleged that a petition was given on 29.5.1986 by the vendor to the petitioner allegedly at the instigation of the third respondent. According to the petitioner, the third respondent was a powerful person in the area and on his objections, without any opportunity to the petitioner, the order of assignment was set aside by order dated 30.6.1986.

2. Aggrieved by the same, the petitioner filed a revision before the Special Commissioner (Land Administration), who set aside the order of the first respondent and remanded the matter to the first respondent. The writ petitioner filed W.P.No.8956 of 1986 questioning the order of the Special Commissioner. Even while the

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said writ petition was pending, the first respondent once again passed an order dated 16.5.1994. According to the petitioner, without giving any opportunity to the petitioner, the said order had been passed. Hence, the writ petition.

3. The third respondent, without stating the manner in which, or the right under which he claims to be in possession of the property, had filed the counter affidavit. In the counter affidavit, he has denied that the assignee had spent considerable amount for bringing the land under cultivation. According to the third respondent, it was not correct to state that the petitioner was put in possession after sale in his favour in 1984 and that he continued to be in possession and enjoyment of the land. The third respondent had initiated proceedings before the Sub Collector to cancel the assignment made in favour of Rengarajan. He claimed to be in possession of the property for the past 25 years and it was only for the said bona fide reason, he had initiated proceedings before the Sub-Collector. The writ petitioner had obtained patta by suppressing all the material facts. On the contrary, the third respondent was in possession and enjoyment of the lands. In fact, the assignee Rengarajan himself had given a petition on 29.8.1986, denying the rights claimed by the petitioner. It was not correct to state that the said petition was filed at his instigation. The first respondent had rightly set aside the order of assignment. He would also contend that the patta was granted to him by the second respondent by proceedings dated 23.6.1994 and he has also paid the cost of the land on 23.6.1994.

4. I also perused the counter affidavit filed on behalf of respondents-1 and 2. In their counter affidavit also, they have not shown or clearly stated as to how the third respondent came into possession and as to what rights he has over the lands. Even though the assignment in favour of Rengarajan is stated to be illegal in view of the fact that the said Rengarajan had obtained assignment without disclosing that he was a Government Servant, nothing is stated about the rights of the third respondent except for stating that he had objected to the assignment in favour of Rengarajan on the ground that he had violated the conditions of assignment. This writ petition is connected with the above Second Appeal in S.A.No.611 of 1998, which arises out of a civil suit filed by the petitioner against the third respondent for permanent injunction. The plaintiff is the appellant in the Second Appeal.

5. The suit was filed for permanent injunction. According to the plaintiff, the suit land, which was a poramboke property, was assigned in favour of one Rengarajan in 1967 and he was put in possession. By a registered sale deed dated 29.12.1984, he had purchased the property for bona fide consideration and had been put

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in possession. Subsequently, patta was also transferred in his favour. The third respondent, who has nothing to do with the property and having been unsuccessful and disappointed in not having been able to persuade the vendor/assignee to sell the property to him, had attempted to interfere with his possession. Hence, the suit.

6. In the written statement, the extent and identity of the property was disputed. But the fact that the property was a Government poramboke was admitted. However, the possession by Rengarajan/assignee was disputed. According to the defendant, he was in actual occupation and he had spent huge amounts and converted the land as a cultivable land. He was raising paddy, groundnut, plantain, etc. His possession was exclusive and had perfected title by adverse possession. Rengarajan had obtained assignment by false representation and suppressing the fact that he was a Government Servant. He never objected to the defendant's enjoyment of the land. On coming to know that the plaintiff had allegedly purchased the land, he filed his objections before the authorities and the assignment was rightly cancelled. The decision for cancellation was arrived at rightly only after spot inspection by the revenue authorities. The vendor himself had agreed for cancellation of the assignment. After referring to the subsequent proceedings upto the filing of W.P.No.8956 of 1986 by the petitioner, the defendant had given the details of cultivation. He has also contended that the suit was bad for non-joinder of the Government and Rengarajan/Assignee.

7. The trial Court found in favour of the plaintiff and decreed the suit as prayed for. The appellate Court, however, held that as on the date of the filing of the suit, the plaintiff was not in possession and hence, had no right to obtain the relief. The appeal was thus allowed by the first appellate Court. Hence, the second appeal.

8. Submissions were made before me by both sides and though the issues arising for consideration are common in both the writ petition and the second appeal and that both the proceedings relate to the same property, it has to be borne in mind that the scope of the two proceedings are different and have to be separately considered. The second appeal has to be dealt with only on the basis of the materials produced before the Court and within the framework of Section 100, C.P.C., while in the writ petition, this Court has to deal with the correctness or otherwise of the impugned orders passed by the revenue authorities. In the Second Appeal, the inter se disputes of both the parties claiming to be in possession of the property has to be duly considered. I would first deal with the Second Appeal.

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9. S.A.No.611 of 1998:

Learned counsel for the appellant contends that the trial Court had considered the question of possession in great detail and had rendered a substantial finding that the appellant was in possession of the property. However, the appellate Court, without reference to any of the facts, had, on the basis of surmises and without any materials, found that the appellant had not proved possession as on the date of the suit. The trial court had taken into account not only the documents filed by the plaintiff such as kist receipts, patta and adangal, but also how the possession by the plaintiff continued, by referring to the proceedings before the High Court and by virtue of the interim orders granted by the High Court. In contrast, on the mere basis of the finding that the defendant had also filed kist receipts, the appellate Court had come to an erroneous conclusion that the plaintiff was not in possession as on the date of filing of the suit.

10. Mr.K.Doraisami, learned senior counsel for the defendants/respondents, contends that the appellate Court had very meticulously gone through the evidence and after specific reference to the kist receipts and adangal, had found that the plaintiff had not proved his possession as on the date of the suit. The finding was one of pure and simple question of fact and did not warrant interference by this Court under Section 100, C.P.C.

11. The following substantial question of law has been framed for consideration:

> " Whether the Court below is right in dismissing the suit for permanent injunction when the plaintiff had proved his title and possession by necessary documents? "

12. I have considered the submissions of both sides.

13. There is no dispute over the fact that the land is a Government poramboke land. The plaintiff claims to be in possession of the property as a title holder having purchased the land from the assignee/Rengarajan by registered sale deed dated 29.12.1984. The defendant claims to be in occupation of the land and in possession and that he was cultivating the land. While the trial Court found the plaintiff in possession on the date of the suit and subsequently also, the appellate Court found that the plaintiff had not proved possession as on the date of the suit. The appellate Court also found that the defendant also did not establish his continuous possession. However, according to the appellate Court, as the plaintiff had not proved his possession, he will not be entitled to a decree.

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14. I have gone through the entire records as well as the findings rendered by the appellate Court.

15. The approach of the appellate Court appears to be very irregular and perverse. It is true that the mere fact that the defendant had not established his case cannot result in automatic decreeing of the suit in favour of the plaintiff. The plaintiff has to establish his case on the strength of his own pleadings and evidence and show that he is entitled to a decree. In this case, the fact remains that the land is a poramboke land and the Government had assigned to Rengarajan in the year 1967. From him, the plaintiff had purchased the property in the year 1984. He has filed kist receipts in the year 1991 though the suit had been filed in 1985 itself. He has filed kist receipts issued in favour of his vendor and himself from Fasli 1376 to 1399 (Exs.A17 to A22). Adangal extracts showing cultivation by the plaintiff have also been filed from Fasli 1380 - Ex.A8 to A16. It is also seen that patta has been transferred in the name of the plaintiff - Ex.A2. In contrast, it is true that the defendant had also produced Exs.B1 to B4, Kist receipts for Fasli 1376 to 1394. It is in this context action had been initiated against the Village Administrative Officer for having issued kist receipts for different parties with reference to the very same land for the same period. It is pertinent to note that after such action had been taken, kist receipts came to be issued only in favour of the plaintiff till 1991, when the suit was taken up for trial. No kist receipt had been issued in favour of the defendant after fasli 1394. Therefore, the appellate Court had rightly come to the conclusion that the defendant had not established continuous possession. But the evidence on the side of the plaintiff, the title being clearly established in his favour having purchased the property from Rengarajan, who is admittedly the assignee from the Government, coupled with the kist receipts produced by him and the patta issued in his favour, I am inclined to hold that there is no proper basis on which the plaintiff's claim could have been rejected. The entire evidence having been meticulously considered and dealt with by the trial Court and in contrast, the findings by the appellate Court are contrary to the available documentary evidence. No reasons have been given to differ from the findings recorded by the trial Court.

16. Collusion between the revenue officials and the third respondent had been effectively brought out not only in the issue of kist receipts in favour of the third respondent who has no manner of any right over the property but also in the contempt petition filed by the plaintiff alleging disobedience of the orders of the High Court in W.M.P.No.15492 of 1994 in W.P.No.10277 of 1994. The petitioner obtained orders of interim stay as against the order of cancellation of assignment and in spite of the stay, revenue officials went ahead to grant assignment in favour of the defendant.

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The High Court found the Tahsildar as guilty of contempt of Court and punished him. That is the extent to which the revenue officials are prepared to go out of the way to help the defendant. In spite of the order of the High Court in the Contempt Petition having been filed before the appellate Court, the appellate Court had not considered the above issues nor cared to discuss about the conduct of the defendant/third respondent in the writ petition and had thought it fit to reverse the well-considered judgment of the trial Court.

17. The fact that the defendant was also trying to purchase the property from Rengarajan had been taken note of by the Appellate Court. Vendor Rengarajan appears to be a person anxious only to make illegal gains. After having sold the property to the plaintiff and also joins him in filing the appeal before the Revenue authorities, later he joins hand with the third respondent. Third respondent/ Defendant in the suit is not only able to win over the revenue officials but also the vendor of the plaintiff himself which is sufficient to throw light on the lack of bona fides of the defendant.

18. It is seen that apart from the kist receipts which are found to be unacceptable having been issued to both the parties, there is absolutely no other evidence supporting the claim of the defendant of being in possession of the property as on the date of the suit. Other than kist receipts (Exs.B1 to B4), all the other documents filed by the defendant, namely, Exs.B5 to B12, pertain to the period subsequent to the filing of the suit and hence, cannot have any relevance. Therefore, the Appellate Court had come to the correct conclusion that the defendant had not established his possession. But as regards possession by the plaintiff, the Appellate Court had chosen to ignore not only the overwhelming documents filed by him, but also subsequent events which confirm possession by the plaintiff. The order of the High Court in Contempt Application No.298 of 1994 has been placed on the file of the Appellate Court in I.A.No.20 of 1997. There is ample evidence to show that the petitioner has been in possession of the property by virtue of several proceedings initiated by the plaintiff before the High Court, inclusive of the order in Criminal M.P.No.12386 of 1987 dated 1.12.1987-Ex.A24. In Paragraph No.9 of the judgment, the trial Court had considered the issue of possession in detail and had rightly recorded a finding that the plaintiff/petitioner had continued to be in possession of the property even in the year 1990.

19. The fact remains that the petitioner is the purchaser from the assignee. Whether the assignment in favour of Rengarajan was proper or not is the subject matter of the writ petition and in this Second Appeal, this Court has to only see as to whether the claim of the petitioner of having been in possession of the property is true or not. He has purchased the property from the assignee in the year 1984 and had produced all the materials such as kist receipts and

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adangal to show that his vendor and himself were in possession of the property. Therefore, the finding that the plaintiff was not in possession on the date of the suit is perverse and contrary to the available evidence.

20. It is also noteworthy to bear in mind that even if it is assumed that the conditions of assignment had been violated by the assignee, it does not enable a third party to commit trespass and to claim protection of his possession. The alleged violations do not enable a trespasser or an encroacher to claim protection of possession from the assignee or person claiming through the assignee, vide the judgment of a learned single Judge of this Court in MUNIAMMAL Vs. MUTHU GOUNDER (2003 (1) CTC 475). I am, therefore, inclined to allow the second appeal. The judgment of the appellate Court is vitiated by perversity and illegality of ignoring the positive evidence adduced on the side of the plaintiff.

21. W.P.No.10277 of 1994:

The scope of the writ petition had already been stated. The impugned proceedings ultimately pertains to cancellation of the assignment in favour of Rengarajan, the vendor of the petitioner. Detailed submissions were made by the learned counsel for the petitioner giving rise to the impugned order in this writ petition, and according to him, this is a specimen case of blatant favouritism by the Revenue officials in order to favour the third respondent. Learned counsel has listed various facts and circumstances inclusive of bar of limitation to cancel the assignment and according to him, those facts would disclose that not only several illegal orders had been passed by the revenue authorities in collusion with the third respondent and without even any notice to him, but also that the revenue officials were prepared to disobey the order of this Court solely with the object of favouring the third respondent. In spite of the stay order, orders of assignment were issued in favour of the third respondent resulting in the Tahsildar being punished for contempt of Court.

22. Per contra, Mr.K.Doraisami, learned senior counsel for the third respondent, would state that the time limit of three years to set aside the orders of assignment was applicable only upto the year 1973. After the issuance of G.O.Ms.No.2555 dated 14.5.1973, there was no time limit for the appropriate authorities to review or to set aside the orders of assignment for any violation of the terms of assignment, or if the assignment had been obtained by any fraud or misrepresentation. In this case, the assignment had been obtained by a Government Servant suppressing the fact of his being a Government

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Servant and also the extent of the land was in excess of the assignment eligible to be assigned free of cost. Therefore, according to the learned senior counsel, the suo motu proceedings were rightly initiated and the assignment was cancelled.

23. In view of my conclusion that the very initiation of the proceedings for cancellation of the assignment is not maintainable and is beyond the period of limitation, it is not necessary to go into the other disputes raised by both sides.

24. The fact remains that the assignment was made as early as on 23.3.1967. Admittedly, prior to the issuance of G.O.Ms.No.2555, Revenue, dated 14.5.1973, any order of assignment could be cancelled only within a period of three years from the date of assignment. Under the said Government Order, powers were conferred on the appropriate higher authorities to cancel the assignment without reference to any time limit. The applicability of the said Government order to pass assignment arose for consideration in several writ petitions before this Court and it has been consistently held that the said Government Order can operate only prospectively. In SURYAKANTHI AND V.M.SUBRAMANIAN Vs. BOARD OF REVENUE AND ANOTHER in W.P.Nos.4350 and 4351 of 1976, S.Mohan,J. (as he then was) by order dated 6.2.1979, held that the order can have only prospective application, as otherwise it would enable to reopen the assignments made long before and when the rights of parties had become clearly settled.

25. In a subsequent judgment also Nainar Sundaram,J., (as he then was), in W.P.No.906 of 1980, by order dated 17.6.1986 - S.PADMAVATHI Vs. SECRETARY TO GOVERNMENT AND OTHERS, held the same view following the judgment cited above.

26. Apart from the said two judgments, the Government itself had issued instructions clearly to the Revenue authorities stating that the said Government Order will have only prospective effect. By letter dated 4.1.1987, the Commissioner had issued instructions to all the Revenue officials and the said letter is as follows:

> " Copy of: the letter No.L.Dis.(E3) 58244/84, dated 4.1.1987 received from the Special Commissioner and Commissioner of Land Administration, Madras-5 addressed to the Collector and District Revenue Officer, Pasumpon Muthuramalingam Dist. At Sivaganga.
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Sir,

Sub: Assignment - Cancellation of assignment - made prior to 14-5-83 - High Court's Judgement in W.P.906/80 - Communicated.

Ref: From the High Court, Madras W.P.No.960/80 dated 17.1.80.

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I enclose a copy of the judgement of the High Court, Madras in W.P.960/80.

2. The High Court, Madras while allowing the writ petition 906/80 filed by one Tmt.Padmavathi, U.Kidakulam Village, Tiruchuli Taluk, Kamarajar District has held that the District Revenue Officers shall not cancel the assignment made prior to the Government order in G.O.Ms.No.2555, Revenue, dated 14-5-73, since the above Government order conferring the powers on District Revenue Officer to cancel the assignment without reference to any time limit has only prospective effect.

3. This decision may be noted for future guidance and also for issuing suitable instructions to subordinate officers. "

27. Therefore, having regard not only to the clear pronouncement of this Court that G.O.Ms.No.2555 dated 14.5.1973 can have only prospective application but also followed by the specific instructions issued by the Government itself, the proceedings initiated by the respondents for cancellation of the assignment cannot be sustained. In view of the said legal position, the entire proceedings initiated by the respondents for cancellation and all the consequential orders passed thereon by the respondents cannot be sustained. Hence, the writ petition requires to be allowed.

With the result, S.A.No.611 of 1980 is allowed and W.P.No.10277 of 1994 is also allowed.

24.08.2005

ksv

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To:

1. The District Revenue Officer
   Pasumpon Muthuramalingam District.

2. The Tahsildar
   Tirupattur Taluk
   Pasumpon Muthuramalingam District.

3. The Subordinate Judge
   Sivagangai.

4. The District Munsif
   Sivagangai.

1 cc to Mr.V.P.Venket, Advocate,SR.35585
2 ccs to Mr.Muthumani Doraisami, Advocate, SR.36103, 36104

JRG (CO)

dv/19.9.05

Order in

W.P.No.10277 of 1994
and
S.A.No.611 of 1998

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